In the matter of various appeals to the Scottish Ministers against Notices of Variation issued by SEPA under Regulation 23(3) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 in respect of CAR licences for various marine salmon farms in Scotland

Representation by WildFish Conservation ("WildFish")

14 March 2025

This representation relates to the following appeals:

Case Reference	Date Case Received	Site Address
ENVE-003-95	07-Mar-25	Balmaqueen Fish Farm, Isle Of Skye
ENVE-003-96	07-Mar-25	Culnacnoc Salmon Farm By Staffin, Sound Of Raasay, Isle Of Skye
ENVE-003-99	07-Mar-25	Eilean Flodigarry Fish Farm, Trotternish, Isle Of Skye, IV51 9XA
ENVE-003-102	07-Mar-25	Invertote Salmon Farm Farm By Staffin, Sound Of Raasay, Isle Of Skye, IV51 9JX
ENVE-003-97	06-Mar-25	Marine Pen Fish Farm Plocropol, Cuddy Point, Scalpay, Isle Of Harris, HS4 3YD
ENVE-003-98	06-Mar-25	Marine Pen Fish Farm, Loch Fyne, Crarae, Furnace, Argyll, PA32 8YA
ENVE-003-100	06-Mar-25	Marine Pen Fish Farm, Strone, Toward, Dunoon, Argyll, PA23 7UJ
ENVE-003-101	06-Mar-25	Marine Pen Fish Farm, Loch Roag, Gravir Outer, Gravir Pierhead, South Lochs, Isle Of Lewis, HS2 9QX
ENVE-003-103	06-Mar-25	Beinn Reithe Marine Pen Fish Farm, Loch Long, Argyll, PA22 3AJ
ENVE-003-104	06-Mar-25	Marine Pen Fish Farm Vacasay, Loch Roag, Isle Of Lewis, HS2 9DW
ENVE-003-105	06-Mar-25	Marine Pen Fish Farm Vuia Mor South, Loch Roag, Isle Of Lewis, HS2 9HW
ENVE-003-33	21-Feb-25	Mpff Creran A, Loch Creran, Argyll, PA38 4BA
ENVE-003-34	21-Feb-25	Kingairloch, Loch Linnhe, Inverness-Shire, PH33 7AE
ENVE-003-36	21-Feb-25	Maol Ban Fish Farm, Sconser, Isle Of Skye, IV49 9AN
ENVE-003-37	21-Feb-25	Isle Of Scalpay, By Isle Of Skye, IV49 9AL
ENVE-003-38	21-Feb-25	Balmeanach, Braes, Isle Of Skye, IV48 8TD
ENVE-003-39	21-Feb-25	Sconser, Isle Of Skye, IV40 8NY
ENVE-003-41	21-Feb-25	By Crossaig, Kilbrannan Sound, Argyll, PA29 6YQ
ENVE-003-40	21-Feb-25	Loch Seaforth, Isle Of Harris, HS3 3BD
ENVE-003-43	21-Feb-25	Noster Fish Farm, Loch Seaforth, Isle Of Harris, HS3 3BD
ENVE-003-75	21-Feb-25	Meavaig, Isle Of Harris, HS3 3AU
ENVE-003-50	21-Feb-25	Marine Pen Fish Farm, Eileen Ard, (Laxford Site 3), IV27 4ST
ENVE-003-47	21-Feb-25	Marine Pen Fish Farm , Shuna Castle Bay, Argyll And Bute, PA31 8UB
ENVE-003-49	21-Feb-25	Mpff Dunstaffnage, North Of Ganavan Hill Dunbeg, Argyll And Bute, PA37 1QG

ENVE-003-52	21-Feb-25	Mpff Scallastle Bay, Sound Of Mull, Argyll, PA65 6BA
ENVE-003-54	21-Feb-25	Mpff Camas Doun Point, Site 2, Loch Kishorn, IV54 8XB
ENVE-003-55	21-Feb-25	Loch Sunart, Liddesdale By Strontian, Inverness-Shire, PH36 4HX
ENVE-003-56	21-Feb-25	Marine Pen Fish Farm, Allt A Chois, (Kishorn North Shore), IV54 8XA
ENVE-003-57	21-Feb-25	Marine Pen Fish Farm, Earnsaig, Also Known As Nevis A, PH41 4PL
ENVE-003-58	21-Feb-25	Mpff Callert (Leven), Loch Leven, North Ballachulish, Invernes-Shire, PH49 4HL
ENVE-003-59	21-Feb-25	Marine Pen Fish Farm, Stoull, (Nevis B), PH41 4PL
ENVE-003-61	21-Feb-25	Marine Pen Fish Farm Fiunary, Sound Of Mull, Argyll,
ENVE-003-60	21-Feb-25	Mpff Rubh An Trilleachain (Shuna South West) , PA34 4UE
ENVE-003-62	21-Feb-25	Loch Duich, By Letterfearn, Kyle Of Lochalsh, IV40 8HA
ENVE-003-63	21-Feb-25	Marine Pen Fish Farm , Ardintigh (Loch Nevis C), Mallaig,
ENVE-003-64	21-Feb-25	Marine Pen Fish Farm Creran B, Loch Creran, Argyll, PA38 4BA
ENVE-003-65	21-Feb-25	Sound Of Harris, Groay-Lingay, HS5 3UE
ENVE-003-66	21-Feb-25	Loch Linnhe, Gorsten,, By Fort William, Inverness-Shire, PH33 6SH
ENVE-003-67	21-Feb-25	Loch Greshornish, Edinbane, Isle Of Skye, IV51 9PU
ENVE-003-68	21-Feb-25	Cheesebay, Lochportain, Isle Of North Uist,
ENVE-003-69	21-Feb-25	Mpff Creag An Sagairt West, Loch Hourn, By Arnisdale, IV40 8JB
ENVE-003-71	21-Feb-25	Camas An Leim, Loch Torridon, By Shieldaig, Strathcarron, IV54 8XW
ENVE-003-76	21-Feb-25	Loch Alsh, By Kyle Of Lochalsh, Inverness-Shire, IV40 8DN
ENVE-003-77	21-Feb-25	Loch Seaforth, Isle Of Harris, HS3 3AG
ENVE-003-78	21-Feb-25	Ardgour Marine Pen Fish Farm, Loch Linnhe, Fort William, PH33 7AA
ENVE-003-79	21-Feb-25	Ardintoul Marine Pen Fish Farm, By Glenelg, IV40 8EG
ENVE-003-80	21-Feb-25	Bagh Dail Nan Ceann Marine Pen Fish Farm, Loch Shuna, Argyll And Bute, PA33 1BW
ENVE-003-81	21-Feb-25	Cairidh Marine Pen Fish Farm, Loch Ainort, Isle Of Skye, IV49 9AN

ENVE-003-83	21-Feb-25	Marine Pen Fish Farm Kenmore Bay (Loch A Chracaich), Kenmore By Shieldaig, Strathcarron, IV54 8XH
ENVE-003-84	21-Feb-25	Marine Pen Fish Farm Shuna Island, PA38
ENVE-003-85	21-Feb-25	Marine Pen Fish Farm Grey Horse Channel Outer, Cheesebay, Lochportain, Isle Of North Uist,
ENVE-003-86	21-Feb-25	Groatay, Cheesebay, Lochportain , Isle Of North Uist,
ENVE-003-87	21-Feb-25	Craobh Haven, , Sound Of Shuna,, Argyll, PA34 4SZ
ENVE-003-88	21-Feb-25	Port Na Cro Fish Farm, Craobh Haven, Sound Of Shuna, Argyll, PA34 4RB
ENVE-003-89	21-Feb-25	Portnalong Fish Farm, Loch Harport, Portnalong, Isle Of Skye, IV47 8SD
ENVE-003-90	21-Feb-25	Sailean Ruadh, Taynuilt, Argyll, PA37 1RG
ENVE-003-93	21-Feb-25	Airds Bay , By Taynuilt, Argyll, PA37 1RG
ENVE-003-35	20-Feb-25	Taranaish, Breasclete Pier, Breasclete, HS2 9ED
ENVE-003-42	20-Feb-25	Sgeir Dughall, Kenmore, IV54 8XH
ENVE-003-44	20-Feb-25	Marine Pen Fish Farm Gob A Bharra, Tarbet Road, Ardrishaig, PA30 8ET
ENVE-003-45	20-Feb-25	Marine Pen Fish Farm Ardcastle, Crarae, By Furnace, PA32 8YA
ENVE-003-46	20-Feb-25	Marine Pen Fish Farm Ardgaddan, Tarbet Road, Ardrishaig, PA30 8ET
ENVE-003-48	20-Feb-25	Marine Pen Fish Farm Meall Mhor, Tarbet Road, Ardrishaig, PA30 8ET
ENVE-003-51	20-Feb-25	Marine Pen Fish Farm Portree Outer, Portree, IV51 9PN
ENVE-003-53	20-Feb-25	West Strome Marine Pen Fish Farm, Midstrome, Lochcarron, IV54 8YH
ENVE-003-70	20-Feb-25	Marine Pen Fish Farm, Rubha Stillaig, Loch Fyne, PA21 2DA
ENVE-003-72	20-Feb-25	Marine Pen Fish Farm, 8A Lisgarry Place , Loch Portree (Torvaig), IV51 9BD
ENVE-003-73	20-Feb-25	Marine Pen Fish Farm Aird Ardheslaig, Kenmore By Shieldaig, Ross-Shire, IV54 8XH
ENVE-003-74	20-Feb-25	Marine Pen Fish Farm, Quarry Point, Crarae, PA32 8YA
ENVE-003-82	20-Feb-25	Marine Pen Fish Farm Strondoir Bay, Tarbert Road, Ardrishaig, PA30 8ET
ENVE-003-91	20-Feb-25	Marine Pen Fish Farm Glennan Bay, Millhouse, Tighnabruaich, PA21 2DA
ENVE-003-92	20-Feb-25	Marine Pen Fish Farm Tarbert South, Tarbert Road, Ardrishaig, PA30 8ET

WildFish

1. WildFish Conservation[1], formerly Salmon & Trout Conservation (referred to as "WildFish" hereafter) has campaigned for over two decades for stronger regulatory oversight of the Scottish fish farming industry and has been directly and closely involved in discussions with the industry, with regulators, including SEPA, and with enquiries and legislative procedures in the Scottish Parliament, including in relation to control of the impact on wild salmonids of sea lice emanating from marine fish farms.

2. In the early 2010s, WildFish was involved in ACAS-mediated negotiations with the fish farming industry, hosted by the Scottish Government, to try to find a way forward in collaboration with the Scottish Salmon Growers Association (SSGA) (now known as 'Salmon Scotland') to protect wild salmon and sea trout. Those efforts failed, entirely due to the SSGA's inability to move from its entrenched incorrect position that no harm was being caused by fish farms to wild fish.

3. In 2012, WildFish gave evidence to the (then) Rural Affairs, Climate Change and the Environment (RACCE) Committee of the Scottish Parliament, which was then considering the impact of sea lice and escapes from Scottish salmon farms on wild fish during the passage of the Aquaculture and Fisheries (Scotland) Bill[2] - see Draft Stage 1 report (parliament.scot) – but the 2013 Act failed to provide any protection for wild salmonids from the sea lice emanating from fish farms.

4. In 2015, WildFish lodged a formal Petition[3] with the Scottish Parliament, calling on the Scottish Government to strengthen Scottish legislative and

[1] www.wildfish.org
[2] Draft Stage 1 report (parliament.scot)
[3] PE01598.pdf (parliament.scot)

regulatory control of marine fish farms to protect wild salmonids of domestic and international conservation importance.

5. After consideration by the Petitions Committee, the WildFish 2015 Petition triggered two more Scottish Parliamentary Committees, the Environment Climate Change and Land Reform Committee (ECCLR) and Rural Economy and Connectivity Committee (REC), to conduct inquiries and issue reports[4] [5], both published in 2018, both concluding that stronger regulatory control of salmon farms was needed to protect wild salmonids as a priority – "*the status quo is not an option*".

From Rural Economy and Connectivity Committee Report "Salmon farming in Scotland", published 27 November 2018, emphasis added

RECOMMENDATION 1

However, the industry also creates a number of economic, environmental and social challenges for other businesses which rely on the natural environment and the Committee recognises this impact. Therefore, if the industry is to grow, the Committee considers it to be essential that it addresses and identifies solutions to the environmental and fish health challenges it faces as a priority.

RECOMMENDATION 2

The Committee strongly agrees with the view of the Environment, Climate Change and Land Reform Committee (ECCLR) Committee that if the industry is to grow, the "status quo" in terms of regulation and enforcement is not acceptable. It is of the view that urgent and meaningful action needs to be taken to address regulatory deficiencies as well as fish health and environmental issues before the industry can expand.

RECOMMENDATION 60

[4] Environmental impacts of salmon farming - Parliamentary Business : Scottish Parliament
[5] Salmon farming in Scotland | Scottish Parliament

The Committee is therefore of the view that maintaining the status quo in terms of the regulatory regime in Scotland is not an option. It considers that there is a need to raise the bar in Scotland by setting enhanced and effective regulatory standards to ensure that that fish health issues are properly managed and the impact on the environment is kept to an absolute minimum. The Committee therefore recommends that a comprehensively updated package of regulation should be developed by Marine Scotland and other regulatory bodies, both to ensure the sector will be managed effectively and to provide a strong foundation on which it can grow in a sustainable manner.

From Environment, Climate Change and Land Reform Committee (5 March 2018) Report to the Rural Economy and Connectivity Committee on the Environmental Impact of Salmon Farming, 2018, emphasis added:

Overall, the Committee concluded:

It is clear to the Committee that the same set of concerns regarding the environmental impact of salmon farming exist now as in 2002 but the scale and impact of these has expanded since 2002. There has been a lack of progress in tackling many of the key issues previously identified.

Over that period there appears to have been too little focus on the application of the precautionary principle in the development and expansion of the sector.

Scotland is at a critical point in considering how salmon farming develops in a sustainable way in relation to the environment. The planned expansion of the industry over the next 10-15 years will place huge pressures on the environment. Industry growth targets of 300,000 - 400,000 tonnes by 2030 do not take into account the capacity of the environment to farm that quantity of salmon. If the current issues are not addressed this expansion will be unsustainable and may cause irrecoverable damage to the environment.

The Committee is deeply concerned that the development and growth of the sector is taking place without a full understanding of the environmental impacts. The Committee considers an independent assessment of the

environmental sustainability of the predicted growth of the sector is necessary[6].

There are significant gaps in knowledge, data, monitoring and research around the adverse risk the sector poses to ecosystem functions, their resilience and the supply of ecosystem services. Further information is necessary in order to set realistic targets for the industry that fall within environmental limits. There should be a requirement for the industry to fund the independent and independently verified research and development needed.

The role, responsibilities and interaction of agencies requires review and agencies need to be appropriately funded and resourced to fully meet their environmental duties and obligations. Scotland's public bodies have a duty to protect biodiversity and this must be to the fore when considering the expansion of the sector. We need to progress on the basis of the precautionary principle and agencies need to work together more effectively.

There need to be changes to current farming practice. The industry needs to demonstrate it can effectively manage and mitigate its impacts.

6. Of specific concern to WildFish was the lacuna in the law (that WildFish had pointed out on many occasions) that Part 1, and particularly section 3 of the Aquaculture and Fisheries (Scotland) Act 2007, as amended, addressed sea lice control on fish farms only for the purpose of securing the animal welfare of the farmed fish, not in respect of the impact of the massive release of sea lice larvae from fish farms on wild salmonids.

7. Although Scottish Government denied for many years that the lacuna existed at all, it has relented on this point, as evidenced by its charging of SEPA in 2020 to use its powers under the Controlled Activities Regulations[7] to apply conditions to fish farm CAR licences to control the impact on wild salmonids of sea lice emanating from the fish farms.

[6] For completeness, no such assessment has yet been undertaken
[7] The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (legislation.gov.uk)

8. Therefore WildFish has a strong legitimate interest in the environmental impact caused by salmon farming in Scotland and thus in these appeals, which seek to undermine what limited controls on the impact on wild salmonids by sea lice emanating from the fish farms SEPA has introduced by way of its Notices of Variation.

Scottish Government's and SEPA's response on sea lice

9. In response to the REC and ECCLR Committee reports, the Scottish Government set up the Salmon Interactions Working Group (SIWG) to provide advice on the interactions between wild and farmed salmonids.

10. In setting up the SIWG, the Scottish Government expressly required consensus from the Group, giving the fish farming industry an effective veto over the Group's conclusions.

11. SIWG reported in May 2020[8]. WildFish responded to the SIWG Report in detail in May 2020[9]. The Scottish Government responded to SIWG 17 months later, in October 2021[10].

12. As part of the Scottish Government's response to SIWG, issued after consultation with the fish farming industry, SEPA was finally tasked by Scottish Government with bringing forward proposals to address fish farm / wild fish interactions, particularly those associated with sea lice, using its powers under the CAR.

13. In other words, because of their effective veto position on SIWG, not only was the fish farming industry well aware of, but it agreed to the overall approach of SEPA's use of CAR to control sea lice impacts using licence conditions.

[8] Report of the Salmon Interactions Working Group (www.gov.scot)
[9] wildfish.org/wp-content/uploads/2022/06/STCS-Review-of-the-Report-of-the-Salmon-Interactions-Working-Group-FINAL-100520.docx.pdf
[10] Salmon Interactions Working Group Report: Scottish Government Response - gov.scot (www.gov.scot)

14. After SIWG reported and SEPA was charged with developing the proposed sea lice framework, two rounds of public consultation followed together with a significant number of roundtable meetings held by SEPA with the fish farm industry and with environmental groups.

15. Indeed, since 2020, SEPA has consulted widely and repeatedly on the proposed sea lice framework to be applied under CAR.

SEPA's first public consultation 2021

16. The first public consultation opened by SEPA in December 2021 and closed in March 2022[11]. SEPA consulted on its outline proposals for what it described as "*the new, spatially based risk assessment framework for regulating the interaction between sea lice from marine finfish farms and wild Atlantic salmon*" noting that the framework would be applied through the Water Environment (Controlled Activities) (Scotland) Regulations 2011(CAR), under which SEPA already regulated discharges from marine finfish farms to the water environment.

17. WildFish responded critically to that consultation in January 2022[12]:

> *"The proposals fall far short of what is required because they:*
>
> *• Ignore the damage already caused by fish farming to wild salmon populations in Scotland.*
>
> *• Fail to recognise the urgency of the situation faced, that populations of wild salmonids are at critically low levels (as per the SIWG), and that "urgent" (per the REC and ECCLR Committees) and "swift" (per SIWG) action to*

[11] Proposals for a risk-based framework for managing interaction between sea lice from marine finfish farm developments and wild Atlantic salmon in Scotland - Scottish Environment Protection Agency - Citizen Space (sepa.org.uk)
[12] STCS-response-to-SEPA-sea-lice-consultation-Jan-2022-1.pdf (wildfish.org):

provide enhanced and effective regulation is needed, adopting the precautionary approach (per REC and ECCLR Committees).

• Fail to recognise or apply the principles laid down in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, in particular, the precautionary principle as it relates to the environment and the principle that preventative action should be taken to avert environmental damage.

• Fail completely to deal with impacts on sea trout, a UK Biodiversity Action Plan priority fish species.

• Fail to address the continued impacts of existing farms, instead being politically focussed on facilitating the expansion of fish farming.

• Fail to deal with impacts on wild salmon beyond a very short time window (April/May).

• Fail even to attempt to meet the NASCO objective that "100% of farms to have effective sea lice management such that there is no increase in sea lice loads or lice-induced mortality of wild salmonids attributable to the farms" to which Scotland is signed up.

• Are vague in delivery, built on largely untested models and numerous assumptions on the interactions between farmed-derived lice and wild fish.

• Rely excessively on self-monitoring, self-assessment and indeed, self-design of both the regulatory tools and models by the fish farmers themselves.

• Are very far from the "robust, transparent, enforceable and enforced" regulatory system that the SIWG sought.

• In any event, would take years to develop and implement properly, with outcomes remaining extremely uncertain, therefore not providing any prospect of effective regulation in the foreseeable future.

18. In its response to the first consultation[13], published in August 2022, SEPA made some small changes following their analysis of the responses

[13] 20220816 Official Sea Lice Regime consultation analysis.pdf (sepa.org.uk)

received and a series of engagement sessions in June 2022 to update stakeholders on changes to the framework and the implementation process.

19. For example, following the first consultation, SEPA decided that sea trout should be included from the beginning of the framework, stating that "*we will initially focus on providing protection of sea trout in Wild Salmon Protection Zones during the early sea phase of their lifecycle and the development of a sea trout monitoring programme that will provide information to help assess risk and further develop the regime".*

20. SEPA also undertook to produce a further consultation "*in early 2023*" detailing how the framework would operate in practice before implementing the regime. This consultation would "*include details of the choices we have made on controls that will apply and an assessment of the social and economic implications of the framework*" with SEPA "*starting to apply the framework to applications for proposed new farms and expansions of existing farms in the second half of 2023".*

SEPA's second public consultation 2023

21. SEPA's promised second public consultation[14] was opened in May 2023 and closed in September 2023.

22. As the second consultation was limited to considering options, none of which would deliver the protection of wild salmonids that WildFish considered necessary, WildFish limited its response to an open letter, supported by a number of community groups in Scotland[15], which heavily criticised the proposed framework for a series of fundamental failings.

[14] Detailed proposals for a risk-based, spatial framework for managing interaction between sea lice from marine finfish farm developments and wild salmonids in Scotland - Scottish Environment Protection Agency - Citizen Space (sepa.org.uk)
[15] Open letter on SEPA sea lice framework proposal FINAL

23. It is important to note that since the REC Committee and SIWG reports, significant new fish farm biomass has been added to the industry total, in the form of planning permissions and CAR licences, both for new farms and for the expansion of existing farms – this despite the REC Committee's Recommendation 2 that "*urgent and meaningful action needs to be taken to address regulatory deficiencies as well as fish health and environmental issues before the industry can expand*".

24. To February 2024, in the period since the March 2018 ECCLR Committee Report, total extra fish farm biomass consented amounted to 55,505 tonnes (45,007 tonnes since the November 2018 REC Committee Report)[16]. That figure will have increased yet further in the last 12 months.

Developments since SEPA was tasked by Scottish Government

25. In the years since 2020, when SEPA was tasked by Scottish Government with bringing forward proposals to address fish farm / wild fish interactions, particularly those associated with sea lice, WildFish considers that the regulation of fish farms has remained wholly inadequate to address the threat to wild salmonids (both salmon and sea trout).

26. To an extent, it is important to recognise that the political steer given to SEPA (and other regulators) appears to have been so supportive of the Scottish salmon farming sector as to make it very difficult for SEPA to deliver proper protection of wild salmonids.

27. SEPA is also bound by the Scottish Regulators' Strategic Code of Practice, issued pursuant to section 5 of the Regulatory Reform (Scotland) Act 2014, which requires SEPA to "*adopt a positive enabling*

[16] There is some uncertainty in the Western Isles component of these totals as the Council there has suffered a cyberattack.

approach in pursuing outcomes that contribute to sustainable economic growth"[17].

28. WildFish considers that the pursuit of 'growth' in the salmon farming industry has diluted the controls SEPA might otherwise have proposed.

29. Additionally, WildFish considers that the approach taken by SEPA has been and remains unlawful to the extent that it cannot meet the legal and other objectives and commitments by which Scotland is bound, including those imposed by the now assimilated Habitats Directive and Water Framework Directive.

30. WildFish remains far from being persuaded that what is now being implemented by way of the Notices of Variation (against which the fish farm companies now appeal) will be sufficient to protect wild salmonids from sea lice emanating for fish farms[18].

31. However, despite the above, SEPA's Notices of Variation that are subject to these appeals, represent some limited progress. WildFish therefore strongly opposes the appeals.

Sea lice emanating from fish farms and wild salmonids

32. That sea lice from salmon farms cause harm to both wild Atlantic salmon and sea trout is no longer seriously contested by any party to the debate, other than from parts of the fish farming industry itself (for fairly obvious reasons).

33. However, even from within the fish farming industry, there are examples of the industry accepting that lice from farms can harm wild fish, notably the Report of the SIWG, on which the industry was represented, noting

[17] Scottish+regulators%27+strategic+code+of+practice.pdf (www.gov.scot)
[18] WildFish. (2023) Open letter on SEPA sea lice framework proposal. https://wildfish.org/wp-content/uplods/2023/09/SEPA-letter_sea-lice-framework-proposal.pdf

"*the potential hazard that farmed salmonid aquaculture presents to wild salmonids…"*.

34. Also, Ben Hadfield, Chief Operating Officer at Mowi Scotland, in an email to Argyll and Bute Council's Planning Officer on 29 May 2018 conceded that "*it is now the generally accepted position that uncontrolled sea lice levels on fish farms located in constrained water bodies can present a hazard to wild fish populations…"*

35. However, a high level of 'tobacco industry-style' denial of the sea lice problem still persists in the fish farming industry and among its proponents. That position is not supported by the available science.

36. A scientific review of the effects on both salmon and sea trout, undertaken in 2018[19] concluded that: "*Results from scientific studies on the impacts of salmon lice on Atlantic salmon and sea trout are summarized here.* ***Considerable evidence exists that that there is a link between farm-intensive areas and the spread of salmon lice to wild Atlantic salmon and sea trout.*** *Several studies have shown that the effects of salmon lice from fish farms on wild salmon and sea trout populations can be severe; ultimately reducing the number of adult fish due to salmon lice induced mortality, resulting in reduced stocks and reduced opportunities for fisheries. Depending on the population size, elevated salmon lice levels can also result in too few spawners to reach conservation limits".*

37. A further thorough scientific review[20] undertaken on the effects on sea trout concluded: "*Amongst salmonids, sea trout are especially vulnerable to salmon lice infestation because they typically remain in coastal waters during their marine residence, and coastal waters are the areas where*

[19] Thorstad, E.B. & Finstad, B. 2018. Impacts of salmon lice emanating from salmon farms on wild Atlantic salmon and sea trout. NINA Report 1449: 1-22. Trondheim, Norway, January 2018 omslagside (wildfish.org)

[20] Thorstad, E.B., Todd, C.D., Bjørn, P.A., Gargan, P.G., Vollset, K.W., Halttunen, E., Kålås, S., Uglem, I., Berg, M., & Finstad, B. (2014). Effects of salmon lice on sea trout. A literature review. omslagside (nina.no)

open net cage Atlantic salmon farms typically are situated. Based on the reviewed studies, it can be concluded that salmon farming increases the abundance of lice in marine habitats and that despite the control measures routinely applied by the salmon aquaculture industry, salmon lice in intensively farmed areas have negatively impacted wild sea trout populations by reducing growth and increasing marine mortality"

and that

"Population-level effects of salmon lice have been quantified in Atlantic salmon by comparing growth and survival of chemically protected fish with untreated control groups released in parallel. There are few such studies on sea trout but the results for Atlantic salmon support that 12 to 44% fewer spawners are potential levels of extra mortality attributable to salmon lice that can be expected for Atlantic salmon populations in farm-intensive areas. Studies of Atlantic salmon likely represent minimum estimates for sea trout mortality at the same sites because salmon smolts migrate quickly through coastal waters and into the open ocean, whereas sea trout remain throughout in coastal or inshore waters".

38. The conclusions of the above scientific reviews are broadly accepted by the Scottish Government's scientists in its "*Impacts of lice from fish farms on wild Scottish sea trout and salmon; summary of science*".[21]

39. The Scottish Government's 2022 Scottish Wild Salmon Strategy[22] notes that *"sea lice are a naturally occurring parasite of wild fish that impair performance and can kill salmon smolts above threshold levels. Salmon farms can substantially elevate levels of sea lice in coastal habitats and potentially increase risks to wild salmon growth and mortality under some local conditions".*

[21] Impacts of lice from fish farms on wild Scottish sea trout and salmon: summary of science - gov.scot (www.gov.scot)
[22] 3. Scotland's Atlantic salmon - Scottish wild salmon strategy - gov.scot (www.gov.scot)

40. However, direct evidence of harm to wild salmonids due to sea lice emanating **from any one fish farm** is not available, except possibly in the long-term data from Marine Scotland Science's Shieldaig Field Station, and is likely to remain impossible to show. Migrating salmon post-smolts become infested with sea lice as they pass through coastal waters, passing *many* farms as they do. Sea lice larvae are also known to travel up to 30km from the fish farms from which they emanate[23]. Infested post-smolts die at sea, where their bodies are impossible to find. Population effects of sea lice from fish farms are, in effect, not possible to show or isolate from other factors that may be at play.

41. The evidence of harm is nonetheless compelling that sea lice emanating from fish farms can and will kill wild salmonids. Lab-based work has established thresholds of harm and Scottish Government field sampling (at the Shieldaig Field Station) showed that sea trout (as proxies for salmon) more often have lice levels above that threshold, particularly when nearby salmon farms are in their second year of production, when on-farm sea lice numbers typically rise, sometimes rapidly. Norwegian and Irish research has proven that fish farm sea lice reduce the numbers of returning adult salmon.

42. While there are other pressures that face Atlantic salmon and sea trout populations, the context in Scotland is that wild salmon catches and Marine Scotland's assessment of the conservation status of salmon breeding rivers are both at all-time lows. The 2022 assessment of Atlantic salmon in Scotland classified over half of assessed rivers or groups of rivers (101 out of 173) as being in poor conservation status (Grade 3)[24].

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[23] This article: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2817184/ cites these two studies for the 30km stat:
https://www.cambridge.org/core/journals/parasitology/article/abs/spatial-and-temporal-variation-in-the-infestation-of-sea-trout-salmo-trutta-l-by-the-caligid-copepod-lepeophtheirus-salmonis-kroyer-in-relation-to-sources-of-infection-in-ireland/7D17EB5B7A
Gargan P. G., Tully O., Poole W. R.2003Relationship between sea lice infestation, sea lice production, and sea trout survival in Ireland, 1992–2001. In Salmon at the edge (ed. Mills D.), pp. 119–135 Oxford, UK: Blackwell Science

[24] 3. Scotland's Atlantic salmon - Scottish wild salmon strategy - gov.scot (www.gov.scot)

By 2024 assessment was 112 being in poor conservation status (with 117 proposed for 2025)[25].

43. Irrespective of efforts to characterise and quantify other pressures, the harm caused by sea lice emanating from fish farms is well understood and precautionary efforts to control the impact of farm-derived sea lice on wild salmonids should not be delayed on the basis of the relative contribution of such 'other pressures' to the decline in wild salmonids. There is no time for such a 'relaxed' approach.

44. In December 2023, in its latest species reassessment, the highly-respected International Union for the Conservation of Nature, which administers the IUCN Red List of Threatened Species, altered the official status of the main UK population of Atlantic salmon (including Scottish wild salmon), reclassifying the population as Endangered, signalling that the UK and Scottish populations are at risk of extinction[26] .

45. One of the key risks to wild Atlantic salmon outlined by the IUCN at the time of reclassification was "*mortality due to salmon lice from salmon farms*", which the body noted was "*of great concern*".

46. This applies not only to the direct threat on the west coast and in the western isles, but also the potential impact of lice from fish farms in the northern isles (Shetland, Orkney) on migrating east and north coast river smolts in terms of reduced marine survival[27].

47. In the context of a poor outlook for wild salmon in Scotland, WildFish considers that, as SEPA's sea lice framework is inadequate. It is based not on a properly precautionary approach, but on a process of what SEPA terms 'adaptive management', and therefore does not meet the

[25] https://www.gov.scot/publications/salmon-fishing-proposed-river-gradings-for-2025-season/pages/proposed-gradings-and-regulations/
[26] https://www.iucn.org/press-release/202312/freshwater-fish-highlight-escalating-climate-impacts-species-iucn-red-list
[27] https://wildfish.org/wp-content/uploads/2024/09/Salmon-Sea-Lice-Modelling-Report_100924.pdf

legal obligations of a number of relevant legal instruments, international law and conventions, assimilated EU-derived law and domestic law.

WildFish / Coastal Communities Network referral to Environmental Standards Scotland (ESS)

48. In March 2024, WildFish and the Coastal Communities Network submitted a formal representation to ESS concerning the Scottish Government's failure to protect wild salmonids from sea lice emanating from salmon farms and SEPA's proposed sea lice framework. See **WF1.**

49. That referral to ESS relates to the harm being caused to wild Atlantic salmon and sea trout by sea lice emanating from Scottish marine salmon farms and the continued failure of the Scottish Government and SEPA to put in place proper controls to protect both species, contrary to their legal obligations under a range of legal instruments - international, assimilated law (ex-European Union) and domestic.

50. WildFish asked ESS to consider whether SEPA's new system to regulate the interaction between fish farm-derived sea lice and wild salmonids is lawful, as against that range of obligations, including the Biodiversity Convention, the Convention on the Conservation of Salmon in the North-East Atlantic, the Water Framework Directive[28], the Marine Strategy Framework Directive, the Habitats Directive and applicable domestic legislation.

51. The Rural Affairs and Islands Committee recently reported on progress in implementing the recommendations of the REC Committee report and stated:

[28] References to Directives should be read as references to the assimilated but EU-derived law in Scotland

"The Committee notes the complaint made by Wildfish and the Coastal Communities Network to Environmental Standards Scotland about whether the SEPA sea lice framework is compliant with environmental law. The Committee requests the Scottish Government keep it informed of the outcome of Environmental Standards Scotland's investigation and, if the complaint is upheld, how it and SEPA intends to respond [29]*"*.

52. In these appeals, Scottish Ministers are strongly encouraged to seek to hear from ESS as to its investigation.

The appeals now brought by the fish farming companies

53. While this representation relates to all the appeals submitted by the various fish farming companies, as there is patently common ground between the companies and strong similarities in their appeals, WildFish addresses primarily the Statement of Appeal by Mowi Scotland Limited in respect of the Notices of Variation applied to the CAR licences for its Sites.

54. However, WildFish asks Scottish Ministers to read across this representation to all the appeals.

55. Dealing with each of the Grounds raised by Mowi in its Statement of Appeal document dated 21st February 2025:

Ground 1 - that the Notices of Variation are unlawful as they do not relate to controlled activities falling within the scope of the Regulations

56. It has been clear for a very long time including in consultations with Scottish Government and with SEPA itself that the proposed control of

[29] Follow-up inquiry into salmon farming in Scotland page 43

sea lice emanating from fish farms and the interactions with wild salmonids were to be regulated under CAR.

57. As WildFish understands the position, at no point until these appeals were made, have the fish farming companies, nor the trade body Salmon Scotland raised any objection to the legal basis of the likely controls to be introduced.

58. In no way has the development of the procedures by SEPA under CAR been in any way hidden from the fish farmers or produced at the last minute.

59. In any event, the fish farm companies' analysis of the law is incorrect.

60. The system of controls of sea lice being put in place by SEPA under the CAR is based on adaptive management.

61. Under Ground 1, Mowi argues (para 8.6) that SEPA cannot lawfully issue the Notices of Variation as it cannot have concluded and has not demonstrated that the activity in question has or is likely to have a significant adverse impact on the water environment.

62. As above, there is more than enough widely-accepted evidence to show that the activity in question is likely to have a significant adverse impact on the water environment (in this case, wild salmonid populations).

63. While WildFish has serious concerns about the adaptive management approach, it nevertheless implies that the system should learn from experience and should be reactive to changes on the ground.

64. It cannot therefore logically be a prerequisite of imposing the Notices of Variation that there is scientific and evidential certainty as to the impact on the water environment (in this case upon wild salmonid populations). For the reasons above that level of scientific certainty is unlikely ever to be achieved, one way or the other.

65. Nor is such certainty required by law as Ground 1 seeks to suggest – "*likely to have*" is sufficient and that test is easily passed.

66. Further, at para 8.14, Mowi argues that Regulation 22 of CAR suggests that a variation to a CAR licence cannot provide for the regulation of a broader activity than the original licence. However, Regulation 22(2) merely indicates that variations **may** include - "*removing adding or amending any condition of an authorisation*". Regulation 22(2) does not require that variations are restricted to just those matters.

Ground 2 - the Notices of Variation are unlawful as SEPA has failed to follow the requirements of the Regulations

67. Under this Ground 2, Mowi seeks to suggest that in various ways, SEPA has failed to follow the exact procedures of the CAR to the letter, including by way of failing to consult properly with appropriate parties.

68. The experience of WildFish is that consultation with the industry and with third parties including environmental groups has been exhaustive, prolonged and if anything excessive, leading to delay in implementation.

69. It cannot reasonably be argued that the fish farming companies were unaware of the likely imposition of conditions within their CAR licences, or were not consulted on the details of the likely conditions.

70. If there have been any minor technical breaches of procedure by SEPA, WildFish would suggest that those have arisen not as a result of some nefarious purpose, but because SEPA was given an extremely complex and difficult new regulatory role by Scottish Government, made more difficult by the opposing positions of the environmental groups (including WildFish) and the fish farming industry.

71. SEPA has further been hampered by the extremely hostile approach of the fish farming industry to the proposed regulatory control of its activities, as evidenced by these appeals.

72. In any event, given the detailed and prolonged consultation exercises conducted by SEPA, any supposed procedural issues that may have arisen will not have made any substantive difference to the final outcome, nor to the Notices of Variation against which the fish farming companies now appeal.

Grounds 3 and 4 – the Standstill Condition

73. The Water Framework Directive[30] – as implemented in Scotland – obliges Scotland not only to prevent deterioration, but also to enhance status of aquatic ecosystems, in all types of water body, including rivers, lochs, lakes, estuaries, coastal waters. The Water Environment and Water Services (Scotland) Act 2003 contains the general duties, at section 2 (with the WFD referred to as "the Directive"):

> *"(1) The Scottish Ministers and SEPA must exercise their functions under the relevant enactments so as to secure compliance with the requirements of the Directive, the Groundwater Directive and the Priority Substances Directive.*
> *(2) The responsible authorities must exercise their designated functions so as to secure compliance with the requirements of the Directive, the Groundwater Directive and the Priority Substances Directive.*
>
> *"the relevant enactments" means this Part, Part 3 of the Regulatory Reform (Scotland) Act 2014 and such other enactments as the Scottish Ministers may by order specify"*

[30] Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy

74. The key objectives of the WFD are set out in Article 4 of the Directive. It requires Member States to use their River Basin Management Plans (RBMPs) and Programmes of Measures (PoMs) to protect and, where necessary, restore water bodies in order to reach good status, and to prevent deterioration.

75. Good status means both good chemical and good ecological status. In Scotland, the fish element of any assessment of water body ecological status is related directly to the condition of salmon and sea trout populations[31].

76. It is under the Water Environment and Water Services (Scotland) Act 2003 (which implements the WFD) that the CAR, which SEPA will now use to implement its sea lice framework, are drawn.

77. Contrary to the position put forward by the fish farming companies, there is ample evidence that there is a likely significant effect of sea lice emanating from fish farms harming the water environment, including wild salmonids. All reputable scientific literature points in that direction and there is none suggesting that sea lice emanating from fish farms constitutes no risk whatsoever to wild salmonid populations.

78. Logically, the release of juvenile sea lice from fish farms in numbers many orders of magnitude higher than the 'natural background' is likely to have a significant effect. Available research data supports that conclusion.

79. There is no legal requirement in the CAR that there is evidential certainty that an impact has occurred before actions, such as the service of Notice of Variations, can be taken by SEPA.

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[31] See UKTAG (2014) River Assessment Method Fish Fauna Fish Classification Scheme 2 (FCS2) Scotland https://www.wfduk.org/sites/default/files/Media/Characterisation%20of%20the%20water%20environment/Biological%20Method%20Statements/River%20Fish%20Scotland%20UKTAG%20Method%20Statement.pdf and The Scotland River Basin District (Standards) Directions 2014 at 00457867.pdf (www.gov.scot)

80. In relation to modelling and data shared by SEPA, as the sea lice framework is based on adaptive management, with the system ‘learning’ as it is applied, such modelling and data will always be a work-in-progress.

81. However, this approach means that baseline conditions in CAR licences are necessary to avoid deterioration, which is a minimum legal requirement imposed by the Water Framework Directive.

82. WildFish’s submission to ESS is that the Standstill Conditions alone are insufficient to meet the requirements of the Water Framework Directive, as while sea lice numbers on a farm may ‘stand still’ under such a condition, the damage to the water environment (in this case, wild salmonids) may well continue, even under such Standstill Condition.

83. Put another way, a Standstill Condition - relating to the historic numbers of sea lice on a fish farm - may in fact ‘bake in’ continuing deterioration in wild salmonid populations, if the standstill is at a level of sea lice that is already ‘too high’. ‘Standstill’ in sea lice numbers on farms does not imply a ‘standstill’ in the further deterioration of (the fish element of) water body status, which is unlawful as against the obligations of Article 4 of the Water Framework Directive.

84. The arguments presented against the Standstill Condition are not consistent with the recommendations of the two Parliamentary inquiries, the SIWG report, the Scottish Government's own policy position and the obligations imposed by existing law.

Ground 5 – failure to take account of relevant considerations

85. In so far as this ground relates to Environmental Management Plans see Ground 8 below.

86. Under Ground 5, Mowi appears to be arguing that controlling sea lice to avoid harm to wild salmonids should always be, in some way, secondary to allowing individual farms to hold farmed fish in a manner, and at a stocking density, which causes health challenges to those farmed fish.

87. In other words, the fish farming companies argue that SEPA requiring the industry to treat its fish to control sea lice for the purposes of protecting wild salmonids, must not be allowed to get in the way of production.

88. WildFish supports SEPA in considering that the fish farming companies should in fact operate their farms in a way that safeguards farmed fish health as well as controls the emission of sea lice into the wider environment.

89. If fish farming companies including Mowi now consider that controlling sea lice and controlling other diseases on fish farms are incompatible, then it is on-farm fish management practices that need to change, and not SEPA's approach.

90. SEPA's primary purpose, as set out in the Regulatory Reform (Scotland) Act 2014 is to ensure that Scotland's environment is protected and improving, including ensuring that natural resources are managed in a sustainable way. In carrying out its functions for that purpose, SEPA must, except to the extent that it would be inconsistent with its purpose, contribute to improving the health and wellbeing of people in Scotland and to achieving sustainable economic growth.

91. Contrary to Mowi's allegations, if anything, SEPA has over-prioritised economic growth, at the expense of the environment, in taking into account the impact of the Standstill Condition and the Sea Lice Limits on the operation of fish farms. It has received considerable input from the fish farm companies during the many consultation exercises conducted since the Parliamentary inquiries and has made many alterations to what it had proposed.

92. Mowi now speculates as to what might happen if the Notices of Variation stand but provides no substantive evidence that SEPA is in breach of its primary purpose.

93. In summary, the fish farm companies appear to be taking the unreasonable and incorrect position that SEPA must always agree with whatever the industry tells it, on farmed fish health or on industry economics, and should always decide matters according to how the industry sees them, failing which SEPA's actions must be unlawful.

94. If SEPA did always so agree, without coming to its own reasoned judgement on such matters, (which may or may not differ from what the fish farming companies say) then SEPA's decisions would then patently be unlawful as against its statutory functions.

95. There is no duty on SEPA to keep fish farming companies happy at all times.

Ground 6 – prematurity

96. Under this Ground, Mowi argues that there has been insufficient consultation but then proceeds to detail very long and significant consultation with the public and with the industry, over a period of five years, during which the industry will have had many opportunities to put forward to SEPA its concerns, proposals and, where necessary, objections.

97. Fish farm companies cannot reasonably or sensibly claim prematurity in respect of consultation.

98. In respect of any perceived lack of baseline information relating to wild salmonid populations, the fish farm companies ignore the fact that the sea lice framework being put in place by SEPA follows Scottish

Government's decision, on the back of the two Parliamentary inquiry recommendations, that the system be based on adaptive management.

99. For the reasons given above, in relation to available research concerning impact of sea lice emissions from fish farms on wild salmonid populations, it would be entirely unrealistic to relate to wait for evidential certainty, farm-by-farm, which now appears to be the position of the fish farming companies.

100. That would be the antithesis not only of an adaptive management approach, but also of the precautionary principle to which SEPA must seek by law to apply.

101. In relation to any supposed lack of clarity on future next steps, again WildFish refers to the fact that the system being put in place by SEPA is based on adaptive management, an approach the industry itself supported. Adaptive management implies that SEPA's controls will necessarily change over time, as evidence is gathered.

Ground 7 – Commercial confidentiality

102. The reporting requirements in the Notices of Variation, that fish farming companies must report data including the average number of adult female sea lice per sampled Atlantic salmon, and the total number of Atlantic salmon held in all pens on a fish farm, is not unreasonable.

103. Such data is required for SEPA to apply adaptive management and alter, if necessary, its procedures over time.

104. As to any supposed commercial impact of publication of such data, highly similar data has already been published for many years on the Scotland's Aquaculture database, including monthly farm-by-farm biomass figures, and within Fish Health Inspectorate reports, which routinely detail the number of fish initially stocked into cages of inspected

fish farms, the number of fish that have been subject to mortality events etc.

105. The fish farming companies fail to identify how the data now required to be published under the Notices of Variation places them at ***any greater*** supposed commercial risk than the data already published under different statutory requirements. Indeed, fish farm companies have voluntarily published such information about their operations in the past. Mowi itself publishes lice and mortality data on a weekly basis[32]. The supposed risk to commercial interests is, at best, exaggerated for effect.

106. Similarly, no real issues of breaches of competition law arise from the supposed influence that the publication of such data might have on pricing.

Ground 8 – duplication (EMPs)

107. In relation to sites that are currently subject to an EMP required by planning conditions (requiring the approval of a plan), those planning conditions for EMPs typically require the agreement of an EMP, but not necessarily its implementation or enforcement.

108. The implementation of EMPs is poor and very little if any substantive changes occur on fish farms as a result of EMPs. Councils are woefully ill-resourced (and lack necessary expertise) to monitor and/or enforce EMPs.

109. In 2021, WildFish analysed the application of EMPs (see **WF2**) and concluded:

> *"The overwhelming body of scientific information indicates that sea lice from aquaculture can and do negatively affect populations of salmon and sea trout.*

[32] https://mowi.com/uk/sustainability/lice-mortality-reporting/

Following the Rural Economy and Connectivity Committee's Report, the Scottish Government is for the time being relying on planning authorities controlling impacts on wild salmonid fish from fish-farm derived sea lice by way of planning conditions requiring Environmental Management Plans (EMPs).

EMPs do not follow a precautionary approach, but in effect reverse the burden of proof, requiring that evidence of an impact on wild fish is shown before any adaptive management response on a fish farm is considered.

Typical EMPs require evidence of an impact on wild salmonid populations evidenced over a single production cycle, which renders the EMP process insufficiently responsive to real-world conditions.

EMPs contain no robust enforcement mechanisms that can be used, in practice, to compel a fish farmer to undertake on-farm adaptive management of sea lice control.

Planning authorities do not have the resources to undertake the required enforcement role.

EMPs are based on the premise that impacts on wild fish during a single year can be mitigated by changes on the farm for subsequent production cycles, but this fails to recognise the cumulative impact of other fish farms and of other pressures on wild salmonid populations in Scotland.

There is an overall lack of transparency in the EMP process, with meetings closed and agreements being reached between the parties, some statutory, some non-statutory, that are not subject to wider public scrutiny.

The very strong public interest in the conservation of the protected species, Atlantic salmon and sea trout, is not recognised within the EMP process.

Overall, the EMP approach does not provide anything approaching the level of certainty that is required for effective mitigation of the likely effects on wild salmonid populations of sea lice emanating from fish farms in Scotland".

110. EMPs are considered as not ideal by most parties, including Fisheries Management Scotland which has stated that "*whilst monitoring of impacts on wild fish has become a condition of recent planning decisions through a requirement to produce an Environmental Management Plan, local authorities accept that this is an imperfect solution*"[33].

111. Planning authorities too have expressed their own strong reservations as to the effectiveness of these EMP conditions, not least in their written and oral evidence to the ECCLR and REC Committees in 2018. It is important that Scottish Ministers appreciate that EMPs were and remain a stopgap / sticking plaster while the new SEPA sea lice framework under the CAR was put in place.

112. Following the REC inquiry in 2018, the Scottish Government's position was that, at least in the interim, planning authorities needed to ensure that wild fish impact caused by farm-derived sea lice was properly controlled: *"…we will take pragmatic action to ensure that the arrangements for regulating fish farm developments are strengthened to provide proportionate and precautionary management of the risk to wild fish based on an adaptive management approach. Thus, as part of any future request for planning advice from now on Marine Scotland will expect an Environmental Monitoring Plan relating-to-impacts-of-salmon-*

[33] Rural Economy and Connectivity Committee Salmon Farming in Scotland - Submission from Fisheries Management Scotland 2018

lice-from-fish-farms-on-wild-scottish sea-trout-and-salmon/ to be delivered as a condition of any consents for marine aquaculture planning applications. This Plan will stipulate that an effective monitoring regime should be put in place in the identified aquaculture farming area and will detail what its key components should be….This approach ***will not only provide a swift strengthening of the protections in the planning process in the short and medium term but also a mechanism to inform the longer term determination of a regulatory framework in this area and thus become part of a staged approach to building a long-term set of arrangements to fill the current regulatory gap***"[34].

113. In its annual review from 2022 from Fisheries Management Scotland recognised that EMPs "*are not sufficiently robust or enforceable to protect our wild salmon and sea trout*".

114. Most recently, the Rural Affairs and Islands Committee, in its 2025 Follow-up inquiry into salmon farming in Scotland stated:

"The Committee also considered the role of environmental management plans which were identified as a way for local authorities to place conditions on farm applications that enabled cooperation between sectors around issues such as wild fish monitoring. The Highland Council said that environmental management plans had been successful in stimulating coordination at local level but that enforcement is challenging because "it would be very difficult to identify enough evidence to take the matter to the enforcement stage":

"I would say that environmental management plans have been successful in stimulating a level of work, co-ordination and co-operation among operators, local fisheries boards, river trusts and so forth, on how best to monitor wild fish and the impact of sea lice on their health. There have therefore been some positives. However, ***the enforcement***

[34] Letter from Fergus Ewing, Cabinet Secretary to Edward Mountain Chair REC Committee 29 January 2019

of the environmental management plans was always going to be difficult. It would be rare to come across information from an assessment in the field that was a smoking gun, indicating that a fish farm was having an unacceptable impact on wild fish. I do not think that anyone has ever delivered data of that nature".

The Highland Council concluded that this was "one reason why there was a crying need for SEPA's framework and a scientifically evidenced approach".

115. In other words, EMPs were never designed to be a long-term option.

116. That fish farming companies now seek to rely on the existence of EMPs as an argument against the Notices of Variation made to their CAR licences by SEPA is, at best, mischievous.

Ground 9 - failure to give [adequate] reasons

Ground 10 – necessary or expedient

Ground 11 – human rights

117. Grounds 9 to 11 are 'catch all' grounds that relate back to the earlier Grounds and are therefore 'padding'.

118. On Ground 11, while the fish farming companies may not welcome the Notices of Variation, any supposed interference in Article 1 Protocol 1 rights by SEPA has been and is entirely proportionate.

Conclusions

119. In conclusion, WildFish requests that Scottish Ministers confirm and uphold the Notices of Variation in their entirety.

120. While WildFish does not consider the Notices of Variation to be sufficient action by SEPA, they do represent some small progress

towards better protection for endangered wild Atlantic salmon and sea trout.

121. Specifically, given the long process that have been followed by SEPA to this point, there is no need, as the fish farming companies seek, for any further delay before Notices of Variation take effect.

122. For completeness, whatever the decision of Scottish Ministers in the substance of the matters before them, any claim for expenses made by the fish farming companies is entirely without merit.

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13th March 2025

Authorised and regulated by the Solicitors' Regulation Authority SRA no 328970 and the Law Society for Scotland no 30663

Appended documents:

WF1 Representation to ESS concerning Scottish Government's failure to protect wild salmonids from sea lice emanating from salmon farms and SEPA's proposed sea lice framework by WildFish and the Coastal Communities Network. March 2024.

WF2 WildFish (2021) What is wrong with Environmental Management Plans?